

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RANDALL K. STARK,) No. ED CV 08-01709-VBK
)
Plaintiff,) MEMORANDUM OPINION AND ORDER
)
) THEREON
v.)
)
MICHAEL J. ASTRUE,)
Commissioner of Social)
Security,)
)
Defendant.)
)

Plaintiff Randall K. Stark ("Plaintiff") filed a Complaint on November 27, 2002, by and through her counsel, pursuant to 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c)(3), seeking review of the Commissioner of Social Security's ("Commissioner") decision that she was not entitled to Supplemental Security Income ("SSI") benefits under Title II of the Social Security Act ("Act"). Plaintiff seeks reversal of the Commissioner's decision, or in the alternative, for the Court to remand the matter for a new hearing.

26 The parties have consented to proceed before United States
27 Magistrate Judge Victor B. Kenton, pursuant to 28 U.S.C. § 636(c).
28 The Commissioner has filed the certified Administrative Record ("AR").

1 On July 14, 2009, pursuant to this Court's case management Order, the
2 parties filed a Joint Stipulation ("JS"). The Court then took the
3 matter under submission. This Memorandum Opinion shall constitute the
4 Court's findings of facts and conclusions of law.

5

6 **I**

7 **BACKGROUND**

8 Plaintiff filed his application for SSI on November 27, 2002.
9 (AR 105-107, 133-142.) Plaintiff alleged an onset date of disability
10 of September 10, 1997. (AR 105, 134.) Plaintiff alleged disabling
11 conditions of nerve damage to the left wrist and both elbows, a
12 herniated disc and PARS defect in the lower back, and a hernia in the
13 left stomach. (AR 134.) Two prior claims had been filed by
14 Plaintiff. The first, filed on or about April 23, 1999 (AR 171-180)
15 was denied. The second, filed on April 24, 2002 (AR 101-103) was
16 denied June 24, 2002. (AR 84-87.) Plaintiff did not request
17 reconsideration for either claim.

18 Plaintiff's application at bar was denied initially, and again
19 upon reconsideration on August 15, 2003. (AR 88-91, 95-99.) Plaintiff
20 requested a hearing before an Administrative Law Judge ("ALJ") on
21 November 22, 2003 (AR 100), which occurred in Orange, California on
22 August 31, 2004 before ALJ Steven L. Chaffin. (AR 38-42.) Plaintiff
23 appeared and testified and was represented by counsel, and testimony
24 was also taken from a Vocational Expert ("VE"). (AR 63-80.)

25 On November 22, 2004, the ALJ issued a decision finding Plaintiff
26 to be not disabled under the Act. (AR 29-36.) Plaintiff's request for
27 review by the Appeals Council was granted on June 3, 2005, as the
28 ALJ's decision did not address Plaintiff's complaints of pain and

1 functional loss, nor did it contain an evaluation of the nonmedical
2 factors as required by Social Security Ruling 96-7p. (AR 24-26.) The
3 ALJ's decision was vacated and remanded for a supplemental hearing and
4 further consideration of Plaintiff's residual functional capacity
5 ("RFC") and to evaluate all medical opinions, stating the weight given
6 to each. (Id.)

7 The second hearing occurred in Orange, California on June 13,
8 2006 before ALJ Barry S. Brown. (AR 20-23.) Plaintiff appeared and
9 testified and was represented by counsel. (AR 47-62.) On April 10,
10 2007, the ALJ issued a decision finding Plaintiff to be not disabled
11 under the Act. (AR 7-19.) Plaintiff's request for review by the
12 Appeals Council was denied on September 26, 2008 (AR 4-6), thus
13 rendering the ALJ's decision the final decision of the Commissioner.
14

15 In the Joint Stipulation, Plaintiff raises the following issues:

- 16 (1) The ALJ failed to properly consider the treating physician's
17 opinion regarding Plaintiff's limitations, namely his
18 required use of a cane to ambulate, and his absence from
19 work more than three times per month due to his impairments
20 and treatment;
- 21 (2) The ALJ failed to properly consider Dr. Steiger's opinion
22 that Plaintiff was restricted against repetitive gripping,
23 pushing, pulling or lifting with the upper left extremity;
- 24 (3) The ALJ failed to properly consider the Plaintiff's RFC by
25 improperly rejecting his treating physician's opinion that
26 Plaintiff required use of a cane to ambulate and required
27 absence from work more than three times per month, and
28 improperly rejecting Dr. Steiger's restriction against

repetitive gripping, pushing, pulling or lifting with the upper left extremity; and

- (4) The ALJ posed an incomplete hypothetical to the vocational expert by not including his required use of a cane to ambulate, his required absence from work more than three times per month, and his restriction against repetitive gripping, pushing, pulling or lifting.

II

DISCUSSION

The Court, pursuant to 42 U.S.C. § 405(g), has the authority to review the Commissioner's decision denying Plaintiff's disability benefits to determine whether his findings are supported by substantial evidence and whether the Commissioner used the proper legal standards in reaching his decision. Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir. 1999); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998).

A claimant is "disabled" for the purpose of receiving benefits under the Social Security Act if he is unable to engage in any substantial gainful activity due to an impairment which has lasted, or is expected to last, for a continuous period of at least twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505(a), 416.905(a). "The claimant bears the burden of establishing a prima facie case of disability." Roberts v. Shalala, 66 F.3d 179, 182 (9th Cir. 1995), cert. denied, 517 U.S. 1122 (1996); Smolen v. Chater, 80 F.3d 1273, 1289 (9th Cir. 1996).

Regulations promulgated by the Commissioner establish a five-step sequential evaluation process to be followed by the ALJ in a

1 disability case. 20 C.F.R. §§ 404.1520, 416.920. In the **First Step**,
2 the ALJ must determine whether the claimant is currently engaged in
3 substantial gainful activity; if so, a finding of nondisability is
4 made and the claim is denied. 20 C.F.R. §§ 404.1520(b), 416.920(b).
5 If the claimant is not currently engaged in substantial gainful
6 activity, in the **Second Step**, the ALJ must determine whether the
7 claimant has a severe impairment or combination of impairments
8 significantly limiting her from performing basic work activities; if
9 not, a finding of nondisability is made and the claim is denied. 20
10 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant has a severe
11 impairment, in the **Third Step**, the ALJ must compare the impairment to
12 those impairments in the Listing of Impairments ("Listing"), 20 C.F.R.
13 § 404, Subpart P, App. 1; if the impairment meets or equals an
14 impairment in the Listing, disability is conclusively presumed and
15 benefits are awarded. 20 C.F.R. §§ 404.1520(d), 416.920(d). When the
16 claimant's impairment does not meet or equal an impairment in the
17 Listing, in the **Fourth Step**, the ALJ must determine whether the
18 claimant has sufficient RFC despite the impairment or various
19 limitations to perform her past work; if so, a finding of non-
20 disability is made and the claim is denied. 20 C.F.R. §§ 404.1520(e),
21 416.920(e). When the claimant shows an inability to perform past
22 relevant work, a *prima facie* case of disability is established and, in
23 **Step Five**, the burden shifts to the Commissioner to show the claimant
24 can perform other work that exists in significant numbers in the
25 national economy. 20 C.F.R. §§ 404.1520(f), 416.920(f).

26 Following this sequential evaluation process, at Step One, the
27 ALJ found that Plaintiff had not engaged in substantial gainful
28 activity since the alleged onset date. (AR 12, Finding 2.) At Step

1 Two, the ALJ found that Plaintiff has an impairment or combination of
2 impairments considered severe, involving the spine, lateral
3 epicondylitis of the left elbow, mild bilateral carpal tunnel syndrome
4 and a left inguinal hernia status post herniorraphy which more than
5 minimally restrict Plaintiff's ability to perform basic work related
6 tasks. (AR 13, Finding 3.) However, at Step Three, the ALJ found
7 such impairments do not meet or medically equal one of the Listings.
8 (Id., Finding 4.) At Step Four, the ALJ found that Plaintiff is
9 unable to perform any past relevant work, has sufficient RFC to sit
10 and stand and/or walk up to six hours per eight hour day, lift and
11 carry ten pounds frequently and twenty pounds occasionally, and
12 occasionally climb, balance, kneel, crouch, crawl, and stoop. (Id.,
13 Finding 5.) Further, the ALJ found Plaintiff is unable to perform any
14 past relevant work, having no limitations to his ability to reach in
15 all directions, finely manipulate or feel, but being limited to
16 occasional handling with the left upper extremity, and suffering from
17 neck and upper extremity pain, bilateral carpal tunnel syndrome and
18 lateral epicondylitis of the left elbow which limit pushing and
19 pulling with the upper extremities. (Id.) At Step Five, the ALJ
20 found that, as jobs exist in significant numbers in the national
21 economy that Plaintiff can perform, he has not been under a disability
22 under the Act since the filing date of the application. (AR 17,
23 Finding 10 & 11.)

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III

THE ALJ PROPERLY REJECTED THE TREATING PHYSICIAN'S OPINION REGARDING

PLAINTIFF'S LIMITATIONS

(Issues One and Three)

A. The ALJ's Decision.

The ALJ concluded, after consideration of the entire record, that Plaintiff's daily activities are not inconsistent with an ability to perform light work activity, and that Plaintiff has the RFC to lift and carry ten pounds frequently and twenty-five pounds occasionally, stand and/or walk for six hours and sit for six hours per eight hour day, and occasionally climb, balance, kneel, crouch, crawl, or stoop. (AR 13, 15.) Further, the ALJ noted Plaintiff has neck and upper extremity pain, bilateral carpal tunnel syndrome, and lateral epicondylitis of the left elbow which limit pushing and pulling with the upper extremities. The ALJ also concluded Plaintiff has no limitations with respect to reaching in all directions, and fine manipulation or feeling, but is limited to occasional handing with the left upper extremity. (Id.)

In his decision, the ALJ incorporated the discussion of medical evidence by the previous ALJ as well as new evidence from Plaintiff's continued treatment with Dr. Ahmed and a consultation with Dr. Altman on October 17, 2005. (AR 14-15.) According to the ALJ, Dr. Ahmed concluded that Plaintiff had the functional capacity to lift and carry up to fifty pounds, could stand and walk for four hours per day, and was restricted from stooping and climbing ladders, and should avoid, "extremes in temperature, wetness, humidity, noise, fumes and hazards." (AR 17, 376-378.)

1 The ALJ deemed the opinion of Dr. Ahmed of "little probative
2 value", as it was, "not consistent with the great weight of other
3 medical opinion." (AR 17.) Further, the ALJ found that Dr. Ahmed's
4 physical capacities assessment of Plaintiff and conclusion of
5 temporary total disability were not supported by medical findings in
6 the record, nor matched the level of Plaintiff's treatment. (Id.)
7 Lastly, the ALJ stated Dr. Ahmed offered no reason for restricting
8 Plaintiff from working around temperature extremes, wetness, noise,
9 fumes, or hazards. (Id.)

10 The ALJ gave the greatest weight to the opinion of Dr. Mason, the
11 examining physician for the Social Security Administration, deeming
12 it, "the most reasonably supported and well grounded with the record
13 as a whole." (AR 17.) The ALJ primarily based his findings of
14 Plaintiff's RFC on Dr. Mason's opinion that Plaintiff is limited to
15 lifting and carrying twenty-five pounds frequently and ten pounds
16 occasionally, standing and/or walking for six hours and sitting for
17 six hours out of an eight hour day, occasionally climbing, balancing,
18 kneeling, crouching, crawling, or stooping, and limited with respect
19 to pushing and pulling with the upper extremities and occasional
20 handling with the upper left extremity. (AR 16.)

21 The ALJ concluded Dr. Mason's findings are supported by the
22 opinions of Dr. Glatstein, Dr. Weiss, and Dr. Steiger. (AR 17.)
23 Specifically, the ALJ referenced Dr. Glatstein's assessment
24 restricting Plaintiff from heavy work. (AR 17, 268.) The ALJ also
25 referred to Dr. Weiss's assessment precluding Plaintiff from heavy
26 lifting and repeated bending and stooping, and restricting Plaintiff
27 from lifting, pushing, pulling heavy objects, or repetitive or
28 prolonged forceful grasping, pinching, holding or torquing with his

1 upper left extremity. (AR 16, 290.) The ALJ cited Dr. Steiger's
2 assessment restricting Plaintiff from heavy lifting, repeated bending
3 and stooping, and from repetitive gripping, pushing, pulling or
4 lifting with the upper left extremity. (AR 16, 311.) Finally, the
5 ALJ recalled the August 15, 2003 assessment from a medical consultant
6 with the State Agency who determined Plaintiff is restricted from
7 constantly using the upper left extremity for pushing and/or pulling,
8 but could occasionally climb, balance, stoop, kneel, crouch, or crawl,
9 and frequently use the left hand for forceful grasping, pinching,
10 holding or torquing. (AR 16-17, 423-430.)

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12 **B. Applicable Law.**

13 The opinions of treating physicians are generally accorded
14 greater weight than those of examining and non-examining physicians
15 because they are more likely to provide:

16 ".... a detailed, longitudinal picture of your medical
17 impairment(s) and may bring a unique perspective to the medical
18 evidence that cannot be obtained from the objective medical
19 findings alone or from reports of individual examinations, such
20 as consultative examinations. . ." 20 C.F.R. §§ 404.1527(d) and
21 416.927(d).

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23 The Ninth Circuit has repeatedly reaffirmed this principle. See
24 Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)(affording
25 greater weight to treating physicians' opinions because they have
26 greater opportunity to know and observe the patient).

27 Still, the treating physician's opinion is not necessarily
28 conclusive as to either a physical condition or the ultimate issue of

1 disability. *Id.*, citing Rodriquez v. Bowen, 876 F.2d 759, 761-62 & n.
 2 7 (9th Cir. 1989). The ALJ may reject the opinion of any physician if
 3 that opinion is brief, conclusory, and inadequately supported by
 4 clinical findings. Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir.
 5 2002), citing Matney v. Sullivan, 981 F.2d 1016, 1019 (9th Cir. 1992).
 6 The ALJ may disregard a treating physician's entire uncontradicted
 7 opinion if unsupported by objective medical evidence in the record, by
 8 giving "clear and convincing" reasons. Lester v. Chater, 81 F.3d 821,
 9 830 (9th Cir. 1995); Batson v. Commissioner of Social Sec. Admin., 359
 10 F.3d 1190, 1195 (9th Cir. 2004).

11 The ALJ may also reject the treating physician's contradicted
 12 opinion in favor of the opinion of a non-treating physician; however,
 13 he must provide specific and legitimate reasons based on substantial
 14 evidence in the record to do so. Maqallanes, 881 F.2d at 751, citing
 15 Cotton v. Bowen, 799 F.2d 1403, 1408 (9th Cir. 1986); Lester 81 F.3d
 16 at 830, citing Murray v. Heckler, 722 F.2d 499, 502 (9th Cir. 1983).
 17 This clearly articulated rule, set forth by the Circuit in its
 18 opinions in Maqallanes and Cotton, has been often cited in later
 19 decisions. See, e.g., Johnson v. Shalala, 60 F.3d 1428, 1432 (9th
 20 Cir. 1995). In Orn v. Astrue, 495 F.3d 625, 631-32 (9th Cir. 2007),
 21 the Ninth Circuit established that an ALJ gives specific and
 22 legitimate reasons when:

23 "... setting out a detailed and thorough summary of the
 24 facts and conflicting clinical evidence, stating [an]
 25 interpretation thereof, and making findings. The ALJ must do
 26 more than offer his conclusions. He must set forth his own
 27 interpretations and explain why they, rather than the doctor's,
 28 are correct." Id. at 632 (citations omitted).

1 The opinions of non-treating doctors may serve as substantial
2 evidence if supported by and consistent with other evidence of record.
3 Morgan v. Commissioner of Social Sec. Admin., 169 F.3d 595, 600 (9th
4 Cir. 1999) citing Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir.
5 1995).

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7 C. Analysis.

8 Plaintiff contends the ALJ ignored without explanation, and
9 therefore erroneously rejected, his treating physician, Dr. Ahmed's
10 opinion that Plaintiff required use of a cane to ambulate, and that
11 Plaintiff would be absent from work more than three times per month
12 due to his impairments and treatment. (JS 3-5, AR 378.) Defendant
13 notes the ALJ incorporated by reference ALJ Chaffin's decision from
14 Plaintiff's first hearing on November 22, 2004. (JS 5.) That
15 decision included the finding that examinations by doctors Glatstein,
16 Weiss, and Mumtaz Ali, each noting Plaintiff had a normal gait,
17 contradicted Plaintiff's contention that he required the use of a
18 cane. (JS 5, AR 34, 74.) Defendant also argues the ALJ's decision
19 assesses Dr. Ahmed's opinion as being inconsistent with the weight of
20 the evidence. (JS 5-6, AR 17.)

21 ALJ Chaffin's decision from Plaintiff's first hearing directly
22 addressed Plaintiff's alleged limitation requiring his use of a cane.
23 Therein, he details the findings of each treating and examining
24 physician of record, specifically referencing doctors Glatstein's,
25 Weiss's, and Mumtaz Ali's findings that Plaintiff had a normal gait.
26 (AR 34-35.) Further, this was not one of the issues for which the
27 matter was remanded. (AR 24-26.)

28 These findings constitute substantial evidence as they are

1 consistent with each other and are supported by evidence in the record
2 such as Plaintiff's testimony that he used the cane "on and off" and
3 Dr. Altman's opinion that Plaintiff was able to ambulate without the
4 use of a cane and "purposefully" walked, "very sluggishly in the
5 examination room." (AR 59, 565.) By incorporating this decision, the
6 ALJ provided specific and legitimate reasons for adopting the opinion
7 of examining physicians over that of the treating physician Dr. Ahmed.

8 The ALJ further justified his determination to give reduced
9 weight to Dr. Ahmed's opinion by pointing to the lack of reasoning or
10 objective medical evidence in the record to support his more
11 pessimistic assessment of Plaintiff's limitations, including only
12 being able to stand and walk for four hours a day, and being
13 completely restricted from stooping and climbing ladders. (AR 17,
14 378.) Further, the ALJ notes that no evidence exists in the medical
15 record to support Dr. Ahmed's limitation on Plaintiff to avoid all
16 exposure to extreme temperatures, wetness, humidity, noise, fumes or
17 hazards, nor is any rationale given for such a conclusion.

18 It was not error for the ALJ to fail to specifically discuss his
19 rejection of the doctor's opinion that Plaintiff was limited in the
20 number of days he could work per month. The ALJ rejected the
21 exertional limitations assessed by Dr. Ahmed which could have
22 conceivably supported this conclusion.

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IV

THE ALJ'S CONSIDERATION OF DR. STEIGER'S OPINION AS TO UPPER
EXTREMITY LIMITATIONS WAS NOT ERRONEOUS

(Issue Two)

A. The ALJ's Decision

After consideration of the entire record, the ALJ concluded that Plaintiff's daily activities are not inconsistent with an ability to perform light work activity, and that Plaintiff has the RFC to lift and carry ten pounds frequently and twenty-five pounds occasionally, stand and/or walk for six hours and sit for six hours per eight hour day, and occasionally climb, balance, kneel, crouch, crawl, or stoop. (AR 13, 15.) Further, the ALJ noted Plaintiff has neck and upper extremity pain, bilateral carpal tunnel syndrome, and lateral epicondylitis of the left elbow which limit pushing and pulling with the upper extremities. The ALJ also concluded Plaintiff is limited to occasional handing with the left upper extremity. (*Id.*)

18 The ALJ acknowledged that although treating physician Dr. Steiger
19 had placed Plaintiff on temporary total disability status in April
20 1998, by November 1998, the doctor had revised his opinion, limiting
21 Plaintiff from heavy lifting, repeated bending and stooping, and from
22 repetitive gripping, pushing, pulling or lifting with the upper left
23 extremity. (AR 16, 311, 330.)

B. Applicable Law.

See discussion of Issue One.

11

1 C. Analysis.

2 Plaintiff contends the ALJ erred in failing to adopt Dr.
 3 Steiger's finding that Plaintiff was precluded from repetitive
 4 gripping, pushing, pulling, or lifting with the left upper extremity.
 5 (JS 7, AR 311.) In fact, the ALJ limited Plaintiff to "occasional
 6 handling with the left upper extremity". (AR 13.)

7 The Commissioner contends the ALJ gave legally sufficient
 8 consideration to Dr. Steiger's opinion by incorporating ALJ Chaffin's
 9 decision (AR 14); and further, Dr. Steiger suggested vocational
 10 rehabilitation over disability. (AR 310-311.) He also notes that the
 11 ALJ limited Plaintiff to occasional handling with the left upper
 12 extremity. (JS 9, AR 591-592.) Further, the ALJ reasonably gave more
 13 weight to the opinion of Dr. Mason, which limited Plaintiff with
 14 regard to pushing and pulling and to occasional handling with the left
 15 upper extremity (Id.) Finally, the Commissioner argues the ALJ
 16 reasonably discounted Plaintiff's credibility, and where evidence can
 17 lead to two rational interpretations, the Commissioner's rational
 18 interpretation must be upheld. (JS 10-12.)

19 The ALJ found that Plaintiff's neck and upper extremity pain,
 20 bilateral carpal tunnel syndrome and lateral epicondylitis of the left
 21 elbow, "limit pushing and pulling with the upper extremities." (AR
 22 13.) The ALJ also found Plaintiff is limited to occasional handling
 23 with the left upper extremity. Rather than a rejection of Dr.
 24 Steiger's opinion, the ALJ's RFC estimation encompasses Dr. Steiger's
 25 limitation against, "repetitive gripping, pushing, pulling or lifting
 26 with the left upper extremity." (AR 16.) An RFC allowing a claimant
 27 to perform occasional upper extremity handling is not in conflict with
 28 a limitation against repetitive exertion in the left upper extremity.

1 Consequently, there is no error in the ALJ's analysis.

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V

4 **THE ALJ INCORPORATED PLAINTIFF'S LIMITATIONS IN INTERROGATORIES TO**
5 **THE VOCATIONAL EXPERT**
6 **(Issue Four)**

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8 For the reasons discussed above, the ALJ properly rejected the
9 opinion of Dr. Ahmed, giving specific and legitimate reasons for doing
10 so. Further, the ALJ's failure to incorporate into his RFC assessment
11 the specific language of Dr. Steiger's opinion was not erroneous.
12 Therefore, the ALJ properly assessed Plaintiff's RFC and provided a
13 complete hypothetical to the vocational expert, which, as the law
14 requires, incorporated all of Plaintiff's determined exertional
15 limitations.

16
17 **ORDER**

18 **IT IS ORDERED** that the decision of the Commissioner is affirmed,
19 and Judgment will issue dismissing this matter with prejudice.

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21 DATED: August 28, 2009

22 _____ /s/
VICTOR B. KENTON
23 UNITED STATES MAGISTRATE JUDGE
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